

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Contact Person:

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Telephone Number:

In Reference to:

OP:E:EQ:T:2

Date: **JAN 25 1989**

BIN:

DO:

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(5) of the Internal Revenue Code which was filed on [REDACTED]

Your creating document indicates that you receive contributions that are used to pay pension and certain other benefits on behalf of the participating employees of [REDACTED]

As stated in your letter of [REDACTED], your sole purpose is to hold, administer and invest funds. You have submitted a Pamphlet Entitled "[REDACTED]". This pamphlet, dated [REDACTED], summarizes the benefits available as being:

1. a pension for life upon retirement;
2. an option to exchange some pension amounts for tax-free cash at retirement date;
3. a cash sum, plus a pension for a spouse or dependant(s) if the employee dies while working for the company;
4. a spouse's or dependant's pension upon the employees' death in retirement;
5. additional spouse's or dependant's pension in exchange for part of the employee's pension on retirement;
6. an early retirement option;
7. ill-health early retirement benefits; and a
8. total disability pension.

Re: [REDACTED]

Your [REDACTED] listed the payment of the following benefits:

1. pensions [REDACTED]
2. cash in exchange [REDACTED]
3. disability [REDACTED]
4. death benefits [REDACTED]

The data in the Annual Reports for [REDACTED] are similar.

Although employees may make voluntary contributions to the Fund, the primary source of your funding is contributions from the [REDACTED]. Your [REDACTED] Annual Report indicates that employer contributions exceed employee contributions by at least a [REDACTED] ratio.

You are controlled by a Board of Trustees made up of [REDACTED] members. There are [REDACTED] employee representatives, [REDACTED] employer representatives, and a chairman. The employee representatives are all union members and represent [REDACTED] separate labor unions. The chairman is appointed by the company and has the right to cast a vote when the voting members have a tied vote. In your letter of [REDACTED], you state that the Trustees constitute the main policy-making board for the Fund in investment matters. You are not responsible for negotiating benefits. The day to day management of the fund is in the hands of external investment portfolio managers who have been appointed by the Trustees. The Trustees normally meet [REDACTED] each year.

The Board's function is to implement the pension changes after they have been bargained for and agreed by [REDACTED]. They are not responsible for negotiating benefits changes with the [REDACTED] that is the function of the [REDACTED].

The most recent [REDACTED] we have is dated [REDACTED]. However, it is clear from other materials you have submitted that some of its provisions have been changed. None of these changes appear to have changed your general purpose as a pension manager.

Section 501(c)(5) of the Code provides for the exemption of labor, agricultural, and horticultural organizations.

Section 1.501(c)(5)-1(a) of the Income Tax Regulations provides the organizations contemplated by section 501(c)(5) as entitled to exemption from income taxation are those which:

- (1) have no net earnings inuring to the benefit of any member, and

primary purpose of representing its members in matters of wages, hours of labor, working conditions, and economic benefits.

Rev. Rul. 76-420, 1976-2 C.B. 153, holds that an organization controlled by private individuals and not by a section 501(c)(5) labor organization, which contracted with members of the organization to pay a weekly income to those members in the event of a lawful strike called by the member's labor union, did not qualify for exemption under IRC 501(c)(5). The organization did not represent its members in matters relating to their employment, such as wages, hours of labor, working conditions, or economic benefits, and was not controlled by, or connected with, any of the labor organizations to which its members belonged.

Rev. Rul. 77-46, 1977-1 C.B. 147, in denying recognition of exemption to a collective bargained savings plan, sets forth the general test for establishing exemption under section 501(c)(5) of the Code. The test requires that in order for an organization to qualify as an exempt labor organization, it is necessary that its activities be those commonly or historically recognized as characteristic of labor organizations, or be closely related and necessary to accomplishing the principal purposes of exempt labor organizations. This organization did not qualify for recognition of exemption under section 501(c)(5) because it did not negotiate wages, hours, and working conditions or provide mutual benefits.

Morganbesser v. United States, 984 F. 2d 560 (2nd Cir. 1993); nonacq 1995-2 C.B. 2, held that a multiemployer pension trust operating pursuant to a collective bargaining agreement qualifies for recognition of exemption under section 501(c)(5) of the Code. Judge Miner, in dissenting from the majority opinion, recognized that under the Service's revenue rulings, connection to a traditional labor entity is necessary to support the granting of labor organization exemption. He continued to state that, "there can be no such connection where, as here, a pension plan is funded totally by employers, is not controlled by a labor union but by an independent board of trustees . . . and does not support or supplement the union in any way." Morganbesser, 984 F.2d at 565 (Miner, dissenting).

In Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen v. United States of America (PGGM), 129 F.3d 195 (D.D.C. 1997) cert denied, 119 S. Ct. 43 (October 5, 1998) (hereinafter referred to as PGGM), the Court held that the fund was not exempt from federal income taxes as a labor organization described in section 501(c)(5) of the Code. This decision specifically found the analysis in Morganbesser v. United States, supra, unpersuasive and emphasized that an organization that "fulfills no representational role on behalf of labor nor is controlled by such as organization does not fall

within the common understanding of the term." See also Tupper v. United States, 134 F.3d 444 (1st Cir. 1998).

Section 501(c)(5) of the Code, the regulations, revenue rulings, and court decisions, state that organizations are labor organizations if they are labor unions in the traditional sense or if their principal activity is engaging in employee representation. Other organizations can qualify as labor organizations if they engage in activities appropriate to labor organizations and are controlled by one or more labor organizations. See Portland Co-operative Labor Temple Association, and PGGM, supra. In order for an activity to be considered appropriate to a labor organization, that activity must be commonly or historically recognized as characteristic of labor organizations, or closely related to and necessary to accomplishing the principal purposes of exempt labor organizations. See Rev. Rul. 77-46, supra, (savings plan not considered commonly or historically recognized as a mutual labor organization activity). Where the activities are otherwise appropriate to a labor organization, but there is no significant connection to a labor organization, exemption is not available. See Rev. Rul. 76-420, supra.

The Internal Revenue Service position is that administering employer-provided pension benefits is not an appropriate activity for an exempt labor organization. Section 401 and other pension provisions of the Code contain stringent and detailed requirements for qualification for favorable tax treatment, including tax exemption for a pension trust. Allowing section 501(c)(5) exemption in these situations would effectively undermine the Congressional intent in enacting ERISA provisions of the Code. See PGGM, supra.

Your submissions indicate that your sole purpose is to hold, administer and invest funds. The data in your [REDACTED] Annual Report indicates that you paid [REDACTED] in pension benefits, [REDACTED] in disability benefits and [REDACTED] in death benefits. Accordingly, the provision of partially employer-funded pension benefits appears to be your primary activity. In addition, you do not offer benefits on a mutual basis. You are not funded by dues paid by your employee/members and are not controlled by your members. Although you have stated that you are involved in negotiations concerning pension and other benefits, your role appears limited because you have also indicated that negotiations concerning pension and other benefits are performed by a separate independent body called the [REDACTED]. There is no indication that you are controlled by a union. Rather, the chairman of your board of trustees, an individual appointed by your employer, has the right to cast the deciding vote in the event of a tied vote among your directors.

person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: OP:EO:T:2, Room 6539. These symbols do not refer to your case but rather to its location.

Sincerely yours,

Garland A. Carter /S/

Garland A. Carter
Chief Exempt Organizations
Technical Branch 2

OP:EO:T:2

OP:EO:T:2